IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6037 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL DWARKADAS K

Versus

STATE OF GUJARAT

Appearance:

MR SH SANJANWALA for Petitioners

Mr R V Desai, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR NITIN M AMIN for Respondent No. 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/03/2001

ORAL JUDGEMENT

The petitioners above named have preferred this petition under Articles 226 and 227 read with Articles 14

and 16 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the order of the Special Secretary, Revenue Department, Government of Gujarat at Annexure 'D' to the petition dated 22.3.1990 and that of the Dy.Collector, Mehsana Annexure 'B' dated 30.6.1982 and to confirm the order of the Collector annexed at Annexure 'C' dated 20.9.1989. The facts may be briefly dated as follows:

2. The matter relates to village Vihar of Vijapur Taluka in Mehsana District. It seems that under the scheme of the respondent State, some plots of the said village were required to be allotted to the persons eligible to get them under the said scheme on public auction. The records also show that public auction was held accordingly and after completion of the period of one month, the said auction was confirmed on 1.4.1981 under Order at Annexure 'A' to the petition at page 18. Thereafter respondent no.5 herein had taken out certain objections stating that the concerned authority had not followed proper procedure for holding the said public auction and, therefore, the auction may be treated to be illegal and, therefore, the same be set aside. It was also contended that certain candidates not present at the auction were also shown to be present and, therefore, there was further defect in the procedure to be followed at the public auction. It was further contended that name of the father of the objector was shown at sr.no.44, and therefore, he was interested in the said land and, therefore, he was required to be heard and the objections were also required to be considered. The learned Dy.Collector at Mehsana conducted an enquiry and thereafter, he passed an order dated 30.6.1982 setting aside the aforesaid public auction and the order dated 1.4.1981 confirming the said sale and directed the Taluka Development Officer to hold fresh auction and do the needful after following the procedure according to law.

3. The present petitioners were not satisfied by the said order of the Dy.Collector, Mehsana dated 30.9.1989. Therefore, they preferred an appeal before the Collector being appeal No.111/82. The learned Collector heard the parties and passed an order dated 20.9.1989 under which the learned Collector allowed the said appeal oaf the present petitioner, and set aside the order of the learned Dy.Collector dated 30.6.1982. He was also pleased to confirm the order of the Taluka Development Officer, Vijapur dated 1.4.1981 under which the said public auction and sale were confirmed. Respondent no.5 felt dissatisfied by the said order of the Collector. Therefore, he preferred revision application before the

Government. There the matter was heard and the order was passed on 22.3.1990 under which the Government allowed the said revision application of respondent no. 5 and set aside the order of the Collector dated 20.9.1989 and confirmed the order of the Dy.Collector, Mehsana dated 30.6.1982.

4. Feeling aggrieved by the said orders of the Government, the petitioners have preferred this petition before this court. It has mainly been contended here that the orders of the Government were illegal inasmuch as the objector i.e. respondent no.5 herein, had no interest in the subject matter and no injury is proved to have been caused to respondent no.5 by confirmation of sale in favour of the petitioners. This aspect has not been properly considered by the Government by setting aside the order of the Collector. It is contended that the auction has been confirmed after a span of one month and no objection has been raised by respondent no.5 even after one month and, therefore, the public auction could not be cancelled and set aside after a period of one month. It is also contended here that even otherwise, the orders of the Government are illegal and erroneous and deserve to to be set aside. It is, therefore, prayed that the present petition be allowed and the aforesaid orders of the Government be set aside and the order of the Collector be restored.

5. On receipt of the petition, rule was issued and notice as to interim relief was issued. Thereafter ad-interim relief was granted. Mr R V Desai, learned AGP appears on behalf of respondents no.1,2,3 and 4 in response to the service of rule. Mr Nitin M Amin, learned Advocate has filed his appearance on behalf of respondent no.5. When the matter was called out, Mr Sanjanwala, learned Sr.Advocate appears for the petitioners and Mr R V Desai learned AGP appears for respondents 1 to 4. But none represents respondent no.5. During the course of the argument, the facts were not much disputed. It is an admitted position that the plots were auctioned. That the said sale was confirmed by the order dated 1.4.1981. The said order is placed at Annexure 'A'. There is no dispute about the same. Then the question is as to whether the objector respondent no.5 can raise objections after a span of one month. On this aspect of the case, my attention was drawn to the provisions made in Section 178 of the Bombay Land Revenue Code. Section 178 of the Bombay Land Revenue Code 1879 (for short, 'the Code') may be reproduced for ready reference as under:

"178. Application to set aside sale - At any time within thirty days from the date of the sale of immovable property application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake, or fraud, in publishing or conducting it;

but, except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof,

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one."

6. A bare reading of section 178 of the Code makes it clear that the objections are required to be filed within 30 days from the date of sale of immovable property. Here in the present case, it is an admitted position that the auction was confirmed by the appropriate authority on 1.4.1981 as per order at annexure 'A' at page 18 to the petition. There is no dispute on the said fact between the parties. Therefore, it is an admitted position that the sale was confirmed on 1.4.1981. The sale in question was held on 27.6.1980 which can be gathered from the confirmation order dated 1.4.1981. Therefore, the objection was required to be filed within one month from the said date i.e. 27.6.1980. In other words, the objection was required to be filed on or before 26.7.1980. It is further an admitted fact that objector-respondent no.5 had not come out with objections within a period of thirty days from the date of sale i.e. from 27.6.1980. It appears from the order of the Dy.Collector at page 24 that respondent no.5 had submitted objections before the learned Collector, Mehsana dated 23.4.1981. This would clearly mean that the objections were not filed within one month from the date of sale i.e. 27.6.1980 and as such the objection was clearly time barred.

7. It is to be seen that even before the objections were filed on 23.9.1981, the sale was confirmed by the appropriate authority on 1.4.1981 which can be gathered from Annexure 'A' at page 18 to the petition. It is, therefore, clear that the sale was confirmed before the objections were filed. The Code does not envisage any power, function or jurisdiction with any authority to set aside the sale which has already been confirmed. So, on

the one hand, the objection was not filed by respondent no.5 within thirty days from the date of sale of the immovable property in accordance with section 178 of the Code. On the other hand, the objection was received subsequent to the confirmation of sale. There is no provision providing for entertaining any objection subsequent to the confirmation of sale. Therefore, on going through the scheme of the Code, it is very clear that the Dy.Collector was not required, authorized or competent to consider the objection of the objector-respondent no.5 herein after a passage of 30 days from the date of sale and after the confirmation of the sale in question. In other words, the order of the learned Dy.Collector, setting aside the sale ignoring the provisions of section 178 is ex-facie illegal.

8. When the order of the Dy.Collector is found to be illegal, then the subsequent orders cannot be treated to be legal. In fact, this aspect seems to have been properly considered by the learned Collector, Mehsana, who heard the appeal against the orders of the Dy.Collector. Again the Government does not appear to have applied its mind to the mandatory and salutary provisions of Section 178 of the Code. Therefore, the orders of the Government ignoring the provisions of section 178 of the Code cannot be treated to be legal.

9. It is to be seen that section 178 of the Code itself says that except as is otherwise provided in the following section, no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof. This means that before the sale is set aside by the Collector by invoking powers and jurisdiction under Section 178, the objector has to satisfy the Collector that he has sustained substantial injury on account of the irregularities exhibited during the course of the conduct of the sale. There appears to be no case of objector respondent no.5 that he wanted to stand as a bidder at the public auction. It is not shown as to how he was interested in the said sale. An attempt was made to show that the name of his father was shown in some revenue record but it is not further made clear as to how respondent no.5 was really interested and what injury has been caused to him on account of irregularity which is said to have been committed in the conduct of the said sale. Therefore, on the one hand, the objections were not filed within thirty days from the date of sale in accordance with section 178 of the Code, on the other hand, the injury to respondent no.5 also has

not been established by him. It seems that while exercising revisional jurisdiction, the Government has not properly appreciated the aforesaid legal and vital aspect. In other words, the State Government has not properly appreciated the aforesaid legal provisions found in Section 178 of the Code, and therefore, the orders passed by the Government within four corners of the said provisions cannot be sustained.

10. Learned Advocate for the petitioner has relied upon a decision in the case of Radhy Shayam v. Shyam Behari (AIR 1971 SC 2337). There the Hon'ble Supreme Court was required to consider the provisions of Rule 90 of Order 21 of the Code of Civil Procedure, 1908. The Hon'ble Supreme Court has observed that in order to set aside an auction sale mere proof of a material irregularity such as the one under Rule 69 and inadequacy of price realised in such a sale, in other words, injury, is not sufficient. It is further observed that what has to be established is that there was not only inadequacy of price but a legal injury was caused by reason of the material irregularity or fraud. A connection has thus to be established between the inadequacy of the price and the material irregularity. Here the point was little different. The objection was raised with a view to show that due procedure was not followed inasmuch as there was no proper publication of notice of auction and, therefore, some other persons wanting to make applications for allotment of land, could not apply for the same. Any way, there appears to be no evidence on record to show that such persons were allowed there and they had made grievance that procedure was not followed and due notice was not issued and, therefore, they could not participate at the said auction sale.

11. Another decision relied upon by the petitioner is in case of Jaswantlal Natavarlal Thakkar v Sushilaben Manilal Dangarwala (AIR 1991 SC 770). There also, it was observed that causing of substantial injury to the objector in consequence of irregularity was not shown and therefore, no interference was warranted. Almost similar view was adopted by Full Bench decision in the case of T S Sailappan v. Subbiah Pillai (IR 1963 Madras 156). There the Madras High Court was required to deal with Rule 90 Order 21 of the CPC. Similar view was adopted there also.

12. Any way the provision made in Section 178 of the Code itself shows as to how the objections can be raised, when it can be raised, who can raise the same etc. There it has been made clear that the objection has to be filed

within 30 days. It has not been done in the present matter. There is nothing on record to show that the objector had satisfied the authorities below that there was good and sufficient reason on account of which the objections were filed late. There is also nothing on record to show that the delay was be condoned. Moreover, substantial interest of the objector in the subject matter and legal injury to the objector has also not established and there is no finding recorded by any authority on the said aspect. In the aforesaid view of the matter, the impugned order setting aside the order of the Collector and restoring the order of the Dy.Collector cannot be sustained and therefore, this petition is required to be allowed.

13. Mr R V Desai, learned AGP states that the auction was not conducted in accordance with the provisions of the Code and the Government was right in deciding the issue accordingly. However, the Collector's finding is to the effect that the procedure was followed. He seems to have gone through the records and thereafter seems to have recorded the said finding. Any way, the fact remains that the objection was raised after thirty days and the person concerned seems to have sustained no legal injury. Therefore, even this issue becomes an unacademic issue only.

14. In the result, this petition is allowed and the order of the State Government dated 22.3.1990 passed at Annexure 'D' at page 50 is set aside and the order of the Collector, Mehsana dated 20.9.1989 placed at Annexure 'C' at page 35 is restored.

Rule is made absolute accordingly. In the facts and circumstances, there shall be no order as to costs.

9.3.2001 [D P Buch, J.]
msp